

# **TOWNSHIP OF MARLBORO**

## **ZONING BOARD OF ADJUSTMENT**

1979 TOWNSHIP DRIVE

MARLBORO, NJ 07746-2299

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### **Chairperson**

Michael Shapiro

### **Vice-Chairperson**

Matthew Weilheimer

### **Secretary**

Alan Zwerin

### **Members**

Frank Yozzo

Ira Levin

Jennifer Bajar

Dr. Michael Adler

Ibrahim El-Naboulsi - Alt #1

Stacey DiGrande - Alt # 2

### **Zoning Board Clerk**

Yvonne Cautillo

### **Attorney**

Weiner Lesniak

Ronald D. Cucchiaro, Esq.

### **Engineer**

Birdsall Engineering

James Priolo, P.E.,

### **Planner**

T & M Associates

Richard Cramer, P.P.

### **Traffic Engineer**

French & Farrello

Mark Kataryniak, PE, PTOE

### **Administrative Officer**

### **Zoning Officer**

Sarah Paris

## **MINUTES**

### **ZONING BOARD OF ADJUSTMENT**

**DECEMBER 18, 2012**

**8:00 P.M.**

### **SALUTE TO FLAG**

### **SUNSHINE LAW READ**

#### **PRESENT:**

**Michael Shapiro, Matthew Weilheimer,  
Stacey Di Grande, Ibrahim El Naboulsi,  
Frank Yozzo, Alan Zwerin, Jennifer Bajar  
Michael Adler**

#### **ALSO PRESENT:**

**Ronald Cucchiaro, Esq, Board Attorney  
James Priolo, P.E., Birdsall Engineering, Inc.  
Richard Cramer, P.P., T&M Associates  
Mark Kataryniak, PE, French & Parello**

#### **ABSENT:**

**Ira Levin**

The minutes of December 4, 2012 meeting were approved:

Offered:	Michael Shapiro	Ayes:	5
Seconded:	Alan Zwerin	Absent:	1
		Abstained:	3

No one signed up for Public Session.

ZB12 – 6459 – Syed Alzaidy

Public Hearing for approval of a use variance for density, for a subdivision with bulk variances located at Conover Road, Block 153, Lot 39.03, in the LC Land Conservation zone.

The Board took jurisdiction. Extension of Time will be signed for 1/15/13.

ZB12 – 6465 – Jaswinder K. Kohly

Public hearing for approval to construct a 5' high chain link fence in front yard, ten feet from the property line at 1 Landmark Lane, Block 392, Lot 38.13, in the R-25 zone.

Will renounce for Reorganization date of 1/15/13.

ZB12- 6463– M & M at 483 Route 79, LLC

Public hearing for a use variance for a convenience store and associated gasoline service station at 483 Route 79, Block 122, Lots 27.03 and 27.04.

The Board took jurisdiction. An Extension of Time was signed for 1/15/13.

ZB12- 6453 – Murray, Milena

Continued Public Hearing for approval to construct a 3' x 8' front porch on a new single family dwelling with insufficient front yard setback and insufficient lot depth at 34 Baldwin Avenue, Block 127, Lot 2, in the R-30/20 zone.

Mr. Joseph Vince, Careaga Engineering Inc., 382 Route 46 West, Equity Plaza, Suite 5, Budd Lake, NJ, was sworn in and accepted as a professional witness.

He stated that Block 127, Lot 2, was previously approved to demolish the prior dwelling and to construct a new modular home. They are here for variance relief from the front yard setback. The existing condition of 110 foot depth where 130 foot depth is required. Mr. Vince clarified that 24.3 feet was with the porch; the applicant is proposing 26.8 feet.

Additional Evidence was entered into the record:

- A – 22 Correspondence received 11/13/12 regarding ZB #12-6453, 34 Baldwin Avenue, Block 127, Lot 2, prepared by Joseph Vince, PE, Careaga Engineering, Inc.
- A – 23 Letter from Joseph Vince, Careaga Engineering, Inc., regarding ZB12-6453, Block 127, Lot 2, 382 Route 46 West, Budd Lake, NJ, dated 12/3/12.
- A – 24 Variance Plan prepared Joseph Vince, PE, Careaga Engineering, Inc., 382 Route 46 West, Equity Plaza, Suite 5, Budd Lake, NJ, Dated 11/30/12.
- A – 25 Second Review prepared by James Priolo, Birdsall Services Group, 611 Industrial Way West, Eatontown, NJ, Dated 12/13/12.
- A – 26 Plan
- A – 27 Elevation Plan

There were no questions from the Public.

Motion to Workshop

Offered: Michael Shapiro  
Second: Matthew Weilheimer

The Board stated they were all in favor of the application.

Out of Workshop:

Offered: Michael Shapiro  
Second: Dr. Michael Adler

**Motion to Approve the variance for the front yard set back.**

<b>Offered:</b>	<b>Michael Shapiro</b>	<b>Seconded:</b>	<b>Matthew Weilheimer</b>
<b>Ayes:</b>	<b>7</b>	<b>Nays:</b>	<b>0</b>
<b>Absent:</b>	<b>1</b>	<b>Recused:</b>	<b>0</b>

Motion Approved.

ZB12- 6460 – Tatiana Popova & Mikhail Popov

Public hearing for approval to construct a 14' x 7.75' swim spa in side yard with insufficient side and rear yard setbacks and insufficient distance between structures and where the zone does not list accessory structure setbacks (except for fences) at 22 Kinglet Avenue, Block 412.05, Lot 13, in the PAC-II zone.

The Board took Jurisdiction taken. The following evidence was entered:

A – 1	Petition on Appeal
A – 2	Denial by Zoning Officer
A – 3	Indemnification and Hold Harmless Agreement
A – 4	Disclosure Statement
A – 5	Tax Collector's Certification
A – 6	W-9
A – 7	Notice To Adjoining Property Owners
A – 8	List of Property Owners within 200 feet
A – 9	Certified White Receipts and Green Cards
A - 10	Affidavit of Publication
A – 11	Affidavit of Service
A – 12	Affirmation of Local Pay to Play Ordinance
A – 13	Owners Affidavit of Authorization and Consent
A – 14	Application Affidavit of Completeness
A – 15	Brochure of Swim Spas supplied by Microban Products Company, distributed by Paradise Pools and Spas.
A – 16	Survey for Block 412.05, Lot 13, prepared by Daniel P. Hundley, Crest Engineering Associates, Inc., Crest Professional Plaza, State Hwy 33, Hightstown, NJ, Dated 4/8/99.
A – 17	Memorializing Resolution prepared for Tatiana Popova, Block 412.05, Lot 13, Variance Application 99-5914, Dated January 12, 2000.
A – 18	Report prepared by James Priolo, Birdsall Services Group, Inc., 611 Industrial Way West, Eatontown, NJ, Dated 12/12/12.

Dr. Adler inquired as to the location of the pool and if the swings, shed and fence are remaining. Swings & shed will stay with fence staying.

Mr. Yozzo arrived at 8:10 pm.

The submitted brochure was reviewed.

There were no questions from the Public.

Motion to Workshop.

Offered: Michael Shapiro  
Second: Ibrahim IINaboulsi

Ms. DiGrande and Ms. Bajar have concerns about size of area  
Messrs. IINaboulsi, Adler, Weilheimer have no problem with the application. Mr. Priolo concurred with the size of the pool and Mr. Shapiro also agreed.

Mr. Yozzo abstained due to lateness.

Out of Workshop:

Offered: Michael Shapiro  
Second: Matthew Weilheimer

Motion to approve swim spa with insufficient side and rear yard setbacks.

Offered:	Michael Shapiro	Seconded:	Matthew Weilheimer
Ayes:	5	Nays:	0
Absent:	1	Recused:	0

Motion Approved.

ZB12- 6438 – FSP – Marlboro, LLC

Continued Public Hearing for approval for amended application to construct a two story, seventy-nine unit Assisted Living Facility with associated parking where Assisted Living is not a permitted use in the OPT II Zone located at 23 Route 520 and 53 Route 520, Marlboro, NJ, Block 176, Lots 38, 39, 40 and 41.

Mark Policastro, Esq., on behalf of the applicant, stated that he has renoticed for the December 18, 2012 Zoning Board Meeting. They have obtained previous tracking records.

Mark Vincent, Esq., on behalf of twenty neighbors, stated that notices did show up on November 30, 2012.

Ronald Cucchiaro, Esq. accepted the proof of service.

Juan Solibum, 12 Bluffs Court, was sworn in. He resides there almost twenty years and stated the traffic has increased tremendously. There are more cars turning, compared to years ago and he is concerned about the safety of the residents and their privacy.

Mr. Kataryniak, PE, arrived at 8:40 pm.

Frank LaQuinta, 8 Bluffs Court, was previously sworn in. Mr. LaQuinta stated there are trees behind house and he is concerned about traffic, safety, privacy. He has counted fifteen people a day, with 25 people making u-turns. The entire block is filled with cars. With 80 new residents, there will be noise with garbage pick up.

Mr. Policastro inquired if Mr. LaQuinta was aware this is a bifurcated application.

Mr. Thomas, PP, licensed since 1973 was sworn in. He testified previously and his qualifications were accepted.

0-1 Aerial view of site shows the relationship of the site to the Goddard School, with the southeast corner being entirely wooded with mature trees. Toward the rear of the property are wetlands, which is a concern.

The property has steep slopes and in order to develop this building, they will have to make major cuts into the land. It will destroy most of the vegetation on the site.

The applicant says these things will be addressed in the bifurcation. The Board has the right to request detailed reports on the landscaping.

Mr. Thomas stated it will be difficult to develop per the architectural plans. He said he has experience with assisted living facilities. This is a difficult site, for a residence of this magnitude.

Back in June, this was a proposed three story building. This would have a significant impact at this site. A 46 foot building would be a huge imposition. It will have a major negative impact on the neighborhood. The FAR ratio is also a major impact, exceeding the ordinance. He believes it will have a major impact on the neighborhood.

Mr. Collins says he is here as a Planner. Mr. Policastro stated that the State will consider when they apply to the NJDEP; Mr. Policastro asked Mr. if he is aware of the checklist for the State. Mr. Policastro asked if he was aware from the beginning that we met with the neighbors to inform them. The neighbors did state they do not want anything there.

He also believes the notice is not done properly. Mr. Cucchiaro stated the notice said it will be two or three stories. You do not see often, but it is not deficient.

5 minute recess: 9:20 p.m.

Mr. Shapiro asked the Board's Planner, Mr. Cramer, to comment. He stated that it is in the office transition district. He would like to ask Mr. Thomas if he agrees that this is a transitional type of use. Mr. Cramer inquired if this type of use is diminished as compared to an office type building.

Mr. Shapiro clarified to the public, that it is a two story application.

Mr. Kataryniak stated the driveway has been reduced. The left turn lane would be mitigated and this would eliminate turning around in Bluffs Court. The applicant will have to go to the County, with an analysis being made.

Mr. Weilheimer asked Mr. Thomas if he was aware that Bluffs Court is also commercial. He asked if this isn't better than a commercial use. Mr. Shapiro said that retail stores, strip malls, halls, movie theaters are all permitted uses. Are you saying this use is more intense than retail stores, strip malls, etc. Mr. Thomas said that these applications are usually flat.

Ms. Bajar asked if the concern is more toward the FAR; Mr. Thomas stated that this is a large building on a tough site.

There were no questions from the Public for Mr. Thomas.

Public Questions:

Herbert Chan, 3 Bluffs Court inquired if this area would be large enough to consider a movie or bowling alley. Mr. Thomas said that it was not large enough.

Mr. Weilheimer asked Mr. McElvoy about an official evening shift. He said there may only be four staff people over night. He also said there were usually no visitors in the evening. It is unlikely people come after dinner.

Lewis Fiorica, 19 Bluffs Court, presented poster boards with areas of Bluffs Court:

0-2 – poster Board with 2 colored photos, same on back 10-27 and 11/17

Back of board: 10/26 and 11/27

0-3 – poster Board with 2 colored photos, same on back 10-27 and 11/17

Back of board: 10/26 and 11/27

He said it shows Mr. LaQuinta's property, with and without trees. The rear side shows the playground of the Goddard School and also shows parking during a Halloween party.

Mr. Fiorica stated that twenty years ago, he had to conform with no look-a-likes.

Herbert Green, 15 Bluffs Court, believes there is something fundamentally wrong.

Would like to present:

0-4 - lot where application is developed on.

Other pictures are stand alone developments, such as Chelsea. This area is very tight and different from other developments. Believe there are other open areas that exist; why does it have to go in my backyard. There are noise and privacy issues and does not enhance our values.

Marie Fiorica said there are safety issues getting out of the block. Property values will drop an additional 10%.

Edward Sklobicki, 51 Route 520, Englishtown remains under oath. On behalf of his parents, he stated they resided there prior to Marlboro Plaza. The size and scope is too large and is unfair to the residents. If granted, why can't the facility be smaller.

0-5 Shows the Sklobicki driveway highlighted in green; as compared to the applications which is in yellow.

Mr. Herbert Green stated there are dental offices on 520, which fit in very nicely.

Michael Green, 15 Bluffs Court stated there is a question of safety and having a facility with aged people.

Workshop Offered:

Offered by: Michael Shapiro

Seconded by: Ibrahim IINaboulsi

Mr. Shapiro said his objection is the 24/7 operation.

Dr. Adler stated if they had an ability to turn left, my fears would be mitigated. I don't think the assisted living would impact area. I think we might need this type of service. My concern is more to the turning in. There is a benefit to this use, not to visiting at late hours. He stated the applicant is willing to work with the community.

Ms. Bajar stated the traffic question is ultimately a county decision.

Mr. Yozzo confirmed that he did listen to the tapes. He agrees with the traffic issues and believes this will be a 24/7 low impact action. He would be in favor of the application.

Mr. INaboulsi stated that he has reviewed and has concern for the residents, but, the applicant has complied with all the requests. He is in favor of.

Ms. DiGrande said that she has gone over many times and is not in favor of.

Mr. Weilheimer also said he has reviewed. This is a low impact use. If this is approved, and the DOT does not provide a left turn in, they may not build anyway. I am in favor of but not carte blanche for site plan.

Out of workshop:

Offered by: Michael Shapiro

Seconded by: Frank Yozzo

Mr. Cucchiaro asked for final statements from the attorneys.

Mr. Policastro thanked the Board for all their consideration, beginning in April, 2012. Mr. McElvoy did look at sites that made good planning sense. Professional planning, and architecturals have been provided.

Mr. Vincent said that he appreciated letting the objectors have their indulgences. Question is still, does it belong here. The more you deviate from the plan, this is more of a negative. The applicant's job is to show it does work.

Motion to Approve a Use Variance with conditions attached, within the site plan; negative criteria applies to site plan portion.

Offered: Michael Shapiro  
Ayes: 6  
Absent: 1

Seconded: Alan Zwerin  
Nays: 2  
Recused: 1

Motion Approved. Applicant must demonstrate criteria are satisfied. Notice of public hearing to be provided for site plan.

## MEMORIALIZATIONS

### ZB12- 6453 – Murray, Milena

Memorialization of a resolution granting approval to construct a front porch and steps on a single family dwelling with insufficient front yard setback and insufficient lot depth at 34 Baldwin Avenue, Block 127, Lot 2, in the R-30/20 zone.

### ZB12- 6438 – FSP – Marlboro, LLC

Memorialization of a resolution granting approval for a use variance to construct a two story, seventy-nine unit Assisted Living Facility with associated parking where Assisted Living is not a

permitted use in the OPT II Zone located at 23 Route 520 and 53 Route 520, Marlboro, NJ, Block 176, Lots 38, 39, 40 and 41.

**ZB12- 6460 – Popova, Tatiana & Popov, Mikhail**

Memorialization of a resolution granting approval to construct a 14' x 7.75' swim spa in side yard with insufficient side and rear yard setbacks and insufficient distance between structures and where the zone does not list accessory structure setbacks (except for fences) at 22 Kinglet Avenue, Block 412.05, Lot 13, in the PAC-II zone.

Adjourned at 11:13 pm

Respectfully submitted,